

Syllabus.

of the section which relates to them absolutely useless. It would be a construction which would read out of the section by necessary implication, as unnecessary, the provision as to the waste or scrap tobacco found therein. Manufactured tobacco and partially manufactured tobacco had been already provided for. The waste or clippings must have been considered neither manufactured nor partially manufactured, since they were specially provided for after the manufactured and partially manufactured tobacco had already been regulated by the terms of the section. It follows, therefore, that if, under the rule of *pari materia*, we interpret the provision of the tariff act of 1883 along with the provision of the internal revenue acts, thus quoted, we could not hold the scraps or waste to be a manufactured article, unless we said that that which is neither manufactured nor partially manufactured was yet a manufactured article. We think the context of these sections makes it clear that their general purpose and object was to regulate the manufacture and disposition of all classes of tobacco, and that they conform by a fair construction and interpretation to the view that the scraps are neither a manufactured nor a partially manufactured article. We are here dealing with the waste or the scraps not from the internal revenue point of view, but as an article of commerce, separate from the manufacturer and the factory.

The judgment below is

Affirmed.

SPALDING *v.* CASTRO.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE
NORTHERN DISTRICT OF ILLINOIS.

No. 297. Submitted March 19, 1894. — Decided April 16, 1894.

Seeberger v. Castro, ante, 32, followed.

A ruling by the court below, correct when applied to this case, is sustained without regard to its correctness as a general proposition.

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THE case is stated in the opinion.

Mr. Assistant Attorney General Whitney for plaintiff in error.

No appearance for defendant in error.

MR. JUSTICE WHITE delivered the opinion of the court.

This case is covered by that of the same person against Seeburger, collector, just decided. The tobacco was like that imported in the former case, and was likewise assessed. There was due protest by the importer, seasonable appeal to the Secretary of the Treasury, and, on his adverse ruling, a timely suit. The case was tried by a jury. The court instructed the jury that if they believed from the evidence that the tobacco in question required to have labor expended upon it in order to fit it for consumption, then it was unmanufactured tobacco, as claimed by the plaintiff, etc. Excepting to this ruling, the case was brought here. Whatever may have been the correctness of the instruction as a general proposition, it was correct when applied to the case in hand. *Evanston v. Gunn*, 99 U. S. 660. The judgment is

Affirmed.

WILSON v. HALEY LIVE STOCK COMPANY.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

No. 332. Submitted March 30, 1894. — Decided April 16, 1894.

- A defendant who proceeds to introduce testimony, after denial of his motion for a verdict in his favor on the close of the plaintiff's evidence in chief, thereby waives his exception to that denial.
- A count in trespass *de bonis asportatis*, for the taking and detaining of personal property, can only be supported on the theory that plaintiff was either its owner, or entitled of right to its possession at the time of the trespass complained of.